

REMARKS

This Amendment with Request for Reconsideration is filed in response to a Non-Final Office Action of April 1 2009 in which claims 18-24 under consideration were rejected.

In order to clarify the subject matter of claimed embodiments of the present patent application and in part to obviate the rejections of the Non-Final Office Action of April 1 2009, claims 18-24 are cancelled, and new claims 25-44 are drafted, as submitted herein. The new independent claims 25, 36 and 44 disclose substantially the same subject matter as a cancelled claim 18. Moreover, most of the subject matter of newly drafted dependent claims was recited in dependent claims of the originally filed patent application. All amendments are fully supported by the specification. In particular the new subject matter of independent claim 25 (and other independent claims) of the present patent application is supported:

1) in Paragraph [0017], lines 10-14 (reference here and later on in text is made to the US Publication No 2005/0234799) to support "selecting and intercepting one or more market order executions ..." recited in new claim 25; and

2) in Paragraph [0026], lines 1-4 to support communication of "one or more brokers" with a trader (as recited in new claim 25), because Figure 5 of the present patent application (also see Paragraph [0026], lines 1-4) disclose ranking the performance of a plurality of brokers thus implying that more than one broker may be in communication with one trader.

subject matter recited in new claim 31, submitted herein, is supported by the last sentence of the Paragraph [0015] of the US Publication No 2005/0234799.

Claim Rejections - 35 USC § 112 first paragraph**Examiner's Position:**

Claims 18-20 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description.

Applicant's Response:

Newly drafted claims 25-44 do not use expressions questioned by the Examiner, such as "establishing electronic data connection..." and "without knowledge of said broker".

In addition, the applicant would like to note that the expression "establishing electronic data connection..." has a full support in the specification: e.g., last sentence of paragraph [0016] or second sentence of paragraph [0006] in the Patent Application Publication No. 2005/0234799. As known in the art, "establishing electronic data connection" between a trader and broker(s) may be interpreted in a broad way, e.g., establishing wireless (e.g., using BLUETOOTH) or wired (e.g., using INTERNET OR LAN) data connection, which is obvious to a person skilled in the art. Also, it is noted that for the implementation of embodiments of the present patent application, it is not essential if a particular broker knows or does not know about activity related to the evaluation of broker's performance in real-time or near real-time by "a third party".

Claim Rejections - 35 USC § 112, second paragraph**Examiner's Position:**

Claims 21-23 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter.

Applicant's Response:

Newly drafted claims 25-44 do not use expressions questioned by the Examiner, such as "means plus function".

However, the applicant disagrees that modules "Execution Quality Calculation Module" and/or "Message Interceptor" explicitly shown in Figure 2 of the present patent application require more detailed description in the specification, because implementation of such modules is well known to a person skilled in the art. The applicant agrees with the Examiner's comment in item 14 on page 6 of the Non-final Office action of April 1, 2009 stating that these modules may be implemented as a hardware, a software, or a combination of both, as well known to a person skilled in the art. If the Examiner provides an authorization for adding such a comment/statement in the written description of the present patent application, the applicant would also agree to do so.

Claim Rejections - 35 USC § 101

Examiner's Position:

Claims 18-20 and 21-23 have been rejected under 35 U.S.C. § 101.

Applicant's Response:

Newly drafted claims 25-44, as submitted herein, overcome this rejection. For example, claim 25 recited a method performed by an apparatus for providing a real-time or near real-time assessment of market trade transactions.

Claim Rejections - 35 USC § 103

Examiner's Position:

Claims 18-19 and 21-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Buckwalter et al. (U.S. Patent Publication No. 2003/0177085), in view of Rosen et al. (U.S. Patent Publication No. 2003/0050879), and further in view of Parker et al. (U.S. Patent Publication No. 2004/0059628).

Claim 20 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Buckwalter et al. (U.S. Patent Publication

No. 2003/0177085), in view of Rosen et al. (U.S. Patent Publication No. 2003/0050879), and further in view of Parker et al. (U.S. Patent Publication No. 2004/0059628) as applied to claim 18, and further in view of Quality Execution, LLC (QOE).

Applicant's Response:

The applicant's arguments presented below are applied to claim 18-24 reviewed in the current Non-final Office Action of April 1 2009 and to newly drafted claims 25-44 submitted herein.

The applicant is of opinion that Examiner's arguments are inaccurate. The further analysis is based on MPEP guidelines which are stated in the MPEP Paragraph 2143 as follows:

"To establish a *prima facie* case of obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)."

In reference to claim 18 (which is equivalent to a new independent claim 25 as submitted herein) of the present patent application, the reference of Buckwalter et al. does not teach steps recited in claim 18 (and/or new claim 25) at all, contrary to what is alleged by the Examiner.

The major reason for that is that Buckwalter et al. does not disclose, discuss or even hint about an apparatus (comprising "Execution Quality Calculation Module" and "Message Interceptor" shown in figure 2 of the present patent application), as recited in the new claim 25 and implied in the reviewed claim 18), independently monitoring quality of market trade transactions implemented by the broker(s) and providing the results in real time or near-real time to a trader, according to embodiments of the present patent application. The system of Buckwalter et al., e.g., comprising a trading system 200 and an order protection system 500 shown in Figures 1 and 3 disclosed in Buckwalter et al. is clearly on the broker side and is generating quality data associated with the option order. But the implementation and use of said generated quality data is different than in claim 18 (or new claim 25) of the present patent application.

The description of Buckwalter et al. disclosed in reference to figures 1 and 2 deals with monitoring and optimizing the transactions currently performed by the trading system using the order protection system 500 (e.g., see paragraph 0032 of Buckwalter et al.). In other words, there is no real-time or near real time communication, i.e., "providing information related to said one or more execution qualities to said trader for said real-time or near real-time assessment of the market trade transactions" as recited in the new claim 25 (as well as similarly recited in claim 18 evaluated in the current Office Action of April 1, 2009).

Indeed, according to Figure 2 of Buckwalter et al., the customer order (i.e., from the trader) is received in step 202 (see Paragraph [0037] in Buckwalter et al.). The output of the processing steps in Figure 2 of Buckwalter et al. is summarized in Paragraph [0045] of Buckwalter et al., wherein in step 212 "quality data generated at 210 is reviewed. This review may be automated using a rule-based or other system, or

it maybe performed by one or more operators interacting with the data using operator devices 106" to improve further trading. In other words, the analysis in Buckwalter et al. is performed on the "broker side", e.g., by the operator device 106, and not reported to the trader (equivalent to blocks 102a and 102n in Figure 1 of Buckwalter et al.) in real-time or near real-time as recited in claims 18 (or new claim 25) of the present patent application, contrary to what is alleged by the Examiner.

The Examiner reference to Figure 5a of Buckwalter et al. is also inaccurate because Buckwalter et al. disclose (see paragraph [0058]): "The user interface screens of Fig. 5 may be displayed, for example, on display devices associated with operator devices 106, allowing system operators to interact with, review and monitor option trade data captured using embodiments of the present invention." In other words, there is no reporting real-time or near real time data to the trader, as recited in claims 18 (or new claim 25), contrary to what is alleged by the Examiner.

Moreover, the Examiner's reference to non-disclosure agreement in the Official Notice is not understood by the applicant, because nothing is said in the present patent application about the non-disclosure agreement. This may be even less relevant in regards to the real-time or near real-time assessment of the market trade transactions provided to the trader. The applicant is of opinion that this reference to the non-disclosure agreement in the Official Notice is irrelevant; further explanation about relevance of the non-disclosure agreement is requested from the Office.

Thus, Buckwalter et al. does not disclose step of "providing information related to said one or more execution qualities to said trader for said real-time or near real-time assessment of the market trade transactions." as recited in new claim 25 of the present patent application (and similarly

recited in claim 18 evaluated in the present Office Action) as required by the MPEP Paragraph 2143 quoted herein.

Furthermore, the applicant is of opinion that Rosen et al. do not disclose the steps of intercepting market orders and market order executions, recited in claim 18 and new claim 25. The new claim 25 also recites "selecting" and only then intercepting by said message interceptor one or more market order executions, "wherein said selecting is performed only if a market order execution of said one or more market order executions is matched with the identity of one or more market orders desired to be evaluated out of said one or more market orders" which is not disclosed by Rosen et al. at all.

The applicant requests the Office to clarify its position and indicate which module/block, e.g., in figures 2 or 3 of Rosen et al. is performing said intercepting and/or selecting, recited in the claim 25 (and/or in the reviewed claim 18).

The applicant would like to briefly comment further on the discussion of definition of "receiving" vs. "intercepting" in the Response to Argument section of the Office Action of April 1 2009 and in the applicant communications to the USPTO of February 17 2009. If the Examiner would like to bent English language to make the meaning of the word "intercepting" equivalent to "receiving", it is OK. The important factor in terms of patentability of claim 18 (and newly drafted claim 25 as submitted herein) is who is doing said intercepting (or receiving, according to the Examiner) and selecting: trader, broker or a 3rd party. New claim 25 (as well as evaluated claim 18 based on the disclosure of the present patent application) makes it clear that said intercepting (or receiving, according to the Examiner) and selecting is provided by an apparatus, comprising "Execution Quality Calculation Module" and "Message Interceptor" shown in figure 2 of the present patent application, which is not a "trader" or a "broker".

Thus, none of the references quoted by the Examiner disclose the following steps recited in claim 25:

intercepting by a message interceptor of said apparatus one or more market orders from a trader to one or more brokers, and storing an identity of each of said one or more market orders;

selecting and intercepting by said message interceptor one or more market order executions sent from all or selected brokers of said one or more brokers to said trader, wherein said selecting is performed only if a market order execution of said one or more market order executions is matched with the identity of one or more market orders desired to be evaluated out of said one or more market orders;...

and providing information related to said one or more execution qualities to said trader for said real-time or near real-time assessment of the market trade transactions."

as required by the MPEP Paragraph 2143 quoted herein.

Furthermore, combining 3 references quoted by the Examiner will teach away from the subject matter of the present patent application recited in claim 18 or newly drafted claim 25 submitted herein, because of non-disclosure by these references of major steps of the new claim 25 (or the evaluated claim 18) as discussed herein.

Thus, independent claim 25 and other independent claims of similar scope (claim 36 and 44), as submitted herein, are not unpatentable over Buckwalter et al. in view of Rosen et al., and further in view of Parker et al.

The novelty and non-obviousness of dependent claims is provided by novelty and non-obviousness of independent claims they are dependent from, which is proven herein. More arguments may be presented by the applicant in regard to unique limitations of the dependent claims if requested by the Office.

CONCLUSION

The objections and rejections of the Non-Final Office Action of April 1, 2009 having been obviated by amendment or shown to be inapplicable, withdrawal thereof is requested and passage of all claims to issue is earnestly solicited.

Respectfully submitted,

KELLEY DRYE & WARREN LLP

Attorneys and Agents for Applicants

Date: September 29, 2009



Anatoly Frenkel

Reg. No. 54,106

400 Atlantic Street

Stamford, CT 06901

Direct Tel.: 203-351-8078

Facsimile: 203-327-2669

e-mail: afrenkel@kelleydrye.com